

THE LEWIS LAW FIRM

ATTORNEYS AT LAW

2905 Sackett Street

Houston, Texas 77098

Telephone: (713) 222-8080

Facsimile: (713) 238-7888

JOHN J. BROTHERS

DIRECT DIAL: (713) 238-7800

July 8, 2011

Mr. Michael N. Milby
Clerk of Court
United States District Court
Southern District of Texas
515 Rusk Street
Houston, Texas 77002

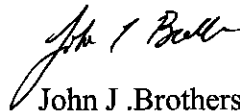
Re: C.A. No. 4:11-cv-00770; *Bradford N. Oesch, Individually and As Independent Executor of the Estate of Nancy Oesch, Deceased, and As Next Friend of Angela Nicole Oesch and Samantha Rene Oesch, Minors, and Doris Roach vs. Woman's Hospital of Texas, et al.*; United States District Court, Southern District of Texas, Houston Division

Dear Clerk:

Enclosed please find Plaintiffs' Response to Defendants, James Mark McBath, M.D. and Mark McBath, M.D., P.A.'s Rule 12(b)(6) Motion to Dismiss to which I ask that you file in the above-referenced matter.

Thank you for your assistance in this matter. Please call me if you have any questions or require additional information.

Sincerely,



John J. Brothers

JJB:vjs
Enclosure

Mr. Michael N. Milby
July 8, 2011
Page 2

cc: Mr. Gene M. Williams (w/enc.)
Mr. Manuel Lopez
Ms. Kathleen A. Frazier
SHOOK, HARDY & BACON, LLP
JP Morgan Chase Tower
600 Travis, Suite 1600
Houston, Texas 77002

CERTIFIED MAIL:RRR

Mr. Andrew J. Lehrman (w/enc.)
ANDERSON, LEHRMAN, BARRE & MARAIST, LLP
1001 Third Street, Suite 1
Corpus Christi, Texas 78404

CERTIFIED MAIL:RRR

Mr. John S. Serpe (w/enc.)
Ms. Nicole Andrews
Mr. William Whitaker
SERPE, JONES, ANDREWS, CALLENDER & BELL, PLLC
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002

CERTIFIED MAIL:RRR

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BRADFORD N. OESCH, Individually and §
as Independent Executor of the Estate of §
NANCY OESCH, Deceased, and as Next §
Friend of ANGELA NICOLE OESCH §
and SAMANTHA RENE OESCH, Minors, §
and DORIS ROACH, §

Plaintiffs

vs.

C.A. No. 4:11-cv-00770

WOMAN'S HOSPITAL OF TEXAS §
WOMAN'S HOSPITAL OF TEXAS, INC., §
JAMES MARK MCBATH, M.D., MARK §
McBATH, M.D., P.A., CENTOCOR, INC., §
CENTOCOR ORTHO BIOTECH, INC., §
and JOHNSON & JOHNSON, INC. §

Defendants.

**PLAINTIFFS' RESPONSE TO DEFENDANTS,
JAMES MARK MCBATH, M.D. AND MARK MCBATH, M.D., P.A.'S
RULE 12(b)(6) MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, the Plaintiffs and file this their Response to Defendants James Mark McBath, M.D. and Mark MCBath, M.D., P.A.'s, hereinafter sometimes referred to as Defendants, Rule 12(b)(6) Motion to Dismiss and would show the Court as follows:

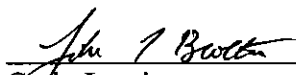
I.

Since the Defendants' 12(b)(6) Motion was filed, Plaintiffs' Counsel has conferred with Defense Counsel. It has been agreed by both parties that the Defendants' Motion is without Merit since §74.351 specifically states the relevant date is the date of service, not the date of filing. *See*

TEX. CIV. PRAC. & REM. CODE §74.351; *See e.g. Otero v. Alonzo*, 2011 Tex. App. LEXIS 1559 (Tex.App.–Corpus Christi, Mar. 4, 2011, no pet. h.). It is undisputed that James Mark McBath, M.D. and Mark McBath, M.D., P.A. were timely served with the Plaintiffs’ expert report. TEX. R. CIV. P. 21a; FED. R. CIV. P. 5; *See Exhibit A*, U.S. Postal Service Certified Mail Receipt. Plaintiffs’ Counsel and Defense Counsel had previously agreed to file an Agreed Order denying the Defendants’ Motion. However, in order to unnecessarily avoid complicating matters with respect to the other motions before the Court, Plaintiffs counsel has instead asked Defense counsel to withdraw their motion. This “Response” is being filed to provide the Court notice of these developments and so that the Defendants’ Motion is not construed to be unopposed.

Respectfully submitted,

THE LEWIS LAW FIRM

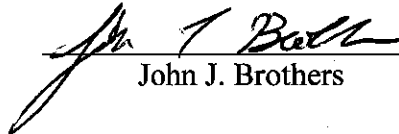


Craig Lewis
Attorney-In-Charge
State Bar No. 12283500
Federal I.D. No. 3452
John J. Brothers
State Bar No. 24064955
2905 Sackett Street
Houston, Texas 77098
Telephone: (713) 222-8080
Facsimile: (713) 238-7888

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

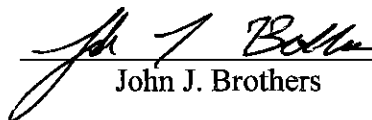
I hereby certify that I conferred with Andrew Lehrman, counsel for Defendants regarding Plaintiff's Response to Defendants' 12(b)6 Motion to Dismiss, and the Parties reached an agreement regarding the motion.


John J. Brothers

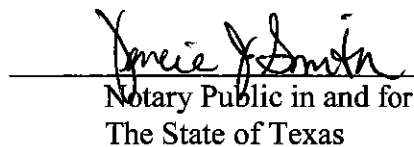
VERIFICATION

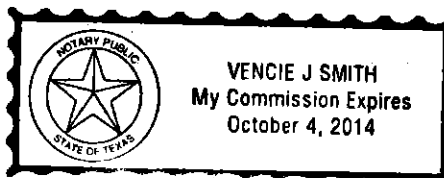
STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared, John J. Brothers, known to be the person whose name is subscribed hereto and to the attached Motion, who, after being duly sworn, upon oath, deposes and says that he is an attorney at law and duly licensed to practice in the State of Texas, that he has read and knows the contents of Plaintiffs' Response to Defendants, James Mark McBath, M.D. and Mark McBath, M.D., P.A.'s Rule 12(b)(6) Motion to Dismiss, and that the matters and facts set forth therein are true and correct.


John J. Brothers

SUBSCRIBED AND SWORN TO before me, the undersigned authority on this 8th day of July, 2011, to certify which witness my hand and seal of office.


Notary Public in and for
The State of Texas



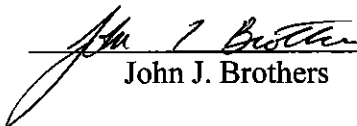
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all known counsel of record via certified mail, return receipt requested on the 8th day of July, 2011 as follows:

Mr. Gene M. Williams
Mr. Manuel Lopez
Ms. Kathleen A. Frazier
SHOOK, HARDY & BACON, LLP
JP Morgan Chase Tower
600 Travis, Suite 1600
Houston, Texas 77002
Counsel for Defendants Centocor, Inc., Centocor Ortho Biotech, Inc. and Johnson & Johnson, Inc.

Mr. Andrew J. Lehrman
ANDERSON, LEHRMAN, BARRE & MARAIST, LLP
1001 Third Street, Suite 1
Corpus Christi, Texas 78404
Counsel for Defendants James Mark McBath, M.D. and Mark McBath, M.D., P.A.

Mr. John S. Serpe
Ms. Nicole Andrews
Mr. William Whitaker
SERPE, JONES, ANDREWS, CALLENDER & BELL, PLLC
Three Allen Center
333 Clay Street, Suite 3485
Houston, Texas 77002
Counsel for Defendants, CHCA Women's Hospital L.P. d/b/a The Woman's Hospital of Texas



John J. Brothers